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APR 20 2005

OFFICE OF PETITIONS

In re Application of :
Veselov et al. :
Application No. 10/798,981 :
Filed: March 11, 2004 : ON PETITION
Title of Invention: :
PROVISIONING TO CDC DEVICES :

This is in response to a petition under 37 CFR 1.47(a), filed August 31, 2004, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor(s). The delay in treating this petition is regretted.

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 11, 2004, without a fully executed oath or declaration. The Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), on May 8, 2004, requiring *inter alia*, a fully executed oath or declaration.

In response to the Notice, Applicant files the instant petition under 37 CFR 1.47(a), and avers that the nonsigning inventor cannot be located.

In support of the petition the Applicant provides a Declaration of Facts of Michael L. Gencarella, Esq., wherein it is averred that a transmittal letter and declaration and power of

attorney were sent to the nonsigning inventor via Federal Express on June 14, 2004. Thereafter, on July 13, 2004, a Certified letter was sent to the nonsigning inventors (at the same mailing address), along with an additional Declaration and Power of Attorney, and a copy of the June 14, 2004 correspondence. No response has been received.

Applicable Law

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1).

As to item (1), Applicant is advised that there are two situations provided for: a) where an inventor refuses to sign the application papers, and b) where an inventor cannot be found or reached after diligent effort.

Here, Applicant alleges that the inventor cannot be found or reached.

As to item (1), if an inventor is unavailable (cannot be reached), while it is not required that the application (specification, claims and drawings), be mailed to the inventor, Applicant must establish the exercise of diligent effort in trying to find or reach the nonsigning inventor¹. A statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made to locate the inventor. (Emphasis supplied). See, MPEP § 409.03(d). *At the very least, an Internet search, or a search of telephone directories should be undertaken of the regions*

¹ Conversely, where it is alleged that an applicant refuses to join an application (the inventor's whereabouts are known), the applicant must establish that the nonsigning inventor was presented with the application for signature.

where it is suspected the non-signing inventor may reside. Copies of the results of such searches must be referred to in any renewed petition. (Emphasis supplied). It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

As to item (1), applicant failed to show or provide proof of diligent effort in trying to find or reach the nonsigning inventor.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.


Derek L. Woods
Attorney
Office of Petitions